

DOCKET FILE COPY OF
Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED
MAY 22 2007

In the Matter of

Petition of Hawaiian Telcom, Inc. for Waiver
of Sections 43.21(g) and 43.21(j) of the
Commission's Rules, 47 C.F.R. §§ 43.21(g)
and 43.21(j)

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CC Docket No. 86-182

ORDER

Adopted: May 18, 2007

Released: May 18, 2007

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by Hawaiian Telcom, Inc. ("Hawaiian Telcom") for a waiver of section 43.21(g) of the Commission's rules as it relates to Hawaiian Telcom's 2006 Automated Reporting Management Information System (ARMIS) Report 43-05 which was due on April 1, 2007.² We take no action in this Order on Hawaiian Telcom's request for waiver of sections 43.21(g) and 43.21(j) of the Commission's rules as they relate to Hawaiian Telcom's 2007 ARMIS Report 43-05 and its 2007 ARMIS Report 43-08, both of which will be due on April 1, 2008.³ Granting Hawaiian Telcom's request for waiver of its 2006 ARMIS filing requirements is consistent with section 1.3 of the Commission's rules, which permits the Commission to waive any of its rules when particular facts make strict compliance inconsistent with the public interest.⁴ Hawaiian Telcom's Petition does not, however, present circumstances sufficient to warrant a waiver of its 2007 ARMIS filing requirements at this time.

II. BACKGROUND

2. On May 2, 2005, Verizon Communications ("Verizon") closed its sale of Verizon Hawaii

¹ ARMIS is an automated reporting system developed by the Commission for collecting financial, operating, service quality, and network infrastructure information from certain incumbent local exchange carriers (LECs). See Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the Commission's Rules), CC Docket No. 86-182, *Order*, 2 FCC Rcd 5770 (1987), *modified on recon.*, *Order on Reconsideration*, 3 FCC Rcd 6375 (1988).

² See Petition of Hawaiian Telcom, Inc., for Waiver of Sections 43.21(g) and 43.21(j) of the Commission's Rules, 47 C.F.R. §§ 43.21(g) and 43.21(j), filed February 21, 2007 (Petition). See *also* 47 C.F.R. §§ 43.21(g) and (j).

³ *Id.*

⁴ See 47 C.F.R. § 1.3. Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner. *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

Inc. to the Carlyle Group and the company was renamed “Hawaiian Telcom.” Hawaiian Telcom asserts that key customer service and business support systems were excluded from the sale, and that the associated functions had to be handled by Verizon during a transition period. Hawaiian Telcom indicates that it contracted with Bearingpoint, Inc. (“Bearingpoint”) to design and implement replacement systems to be used following the transition period. According to Hawaiian Telcom, Bearingpoint failed to deliver replacement systems with sufficient functionality to allow Hawaiian Telcom to collect ARMIS-related data, as well as the basic ability to bill customers, collect revenue for services provided, and process payments.⁵ Bearingpoint’s failures were well documented in the press⁶ as well as in Hawaiian Telcom’s filing with the Securities and Exchange Commission.⁷ Hawaiian Telcom notes that it took several steps to overcome the functionality shortcomings of Bearingpoint’s systems, and incurred significant incremental expenses in retaining third-party service providers to perform the necessary work.⁸ The system recovery and systems build-out is now being handled by another company?

3. *Hawaiian Telcom’s Petition for Waiver*. On February 21, 2006, Hawaiian Telcom tiled a petition for waiver of the Commission’s filing requirements relating to the ARMIS 43-05 Service Quality Report¹⁰ and ARMIS 43-08 Operating Data Report.” Hawaiian Telcom reports that, due to the well-documented difficulties with Bearingpoint’s delivery of critical back-office operational systems,¹² it does not have reliable data for any portion of 2006 with which it can complete the ARMIS 43-05 Report.¹³ Hawaiian Telcom believes that the problems it faces with data collection will continue to impact its ability to complete its 2007 ARMIS 43-05 and 43-08 Reports, which will be due April 1, 2008.¹⁴

4. Hawaiian Telcom contends that good cause exists to waive the filing requirements of section 43.21(g) of the Commission’s rules for Hawaiian Telcom’s 2006 and 2007 ARMIS Reports 43-05, and Hawaiian Telcom’s 2007 ARMIS Report 43-08. Hawaiian Telcom argues that granting its waiver is in the public interest because the public is best served by carriers submitting only complete, accurate, and reliable data for inclusion in the ARMIS database.¹⁵ Further, Hawaiian Telcom asserts that relying

⁵ See Petition at 3

⁶ See Petition at Attachment 1 (including various newspaper articles on the situation caused by the delayed rollout of Bearingpoint’s operating systems).

⁷ See Petition at 2-3, Attachment 2 (showing excerpts from Hawaiian Telcom’s Securities and Exchange Commission Report (Form 8-K) for Feb. 8, 2007).

⁸ See Petition at 3-4 (reporting that Hawaiian Telcom has entered a settlement agreement with Bearingpoint which includes a “substantial monetary settlement”).

⁹ See Petition at 4, 6 (reporting that Hawaiian Telcom has entered into an agreement with Accenture LLP to complete the development and deployment of new systems).

¹⁰ See 47 C.F.R. § 43.21(g). This rule states that each incumbent local exchange carrier for whom price cap regulation is mandatory and every incumbent local exchange carrier that elects to be covered by the price cap rules shall file, by April 1 of each year, a report designed to capture trends in service quality under price cap regulation. The report shall contain data relative to network measures of service quality, as defined by the Wireline Competition Bureau, from the previous calendar year on a study area basis.

“See 47 C.F.R. § 43.21(j). This rule states that each incumbent local exchange carrier with annual operating revenues that equal or exceed the indexed revenue threshold shall file, no later than April 1 of each year, a report containing data from the previous calendar year on an operating company basis. Such report shall combine statistical data designed to monitor network growth, usage, and reliability.

¹² See Petition at Attachment A.

¹³ See Petition at 5-6

¹⁴ See Petition at 6

¹⁵ See Petition at 7

on incomplete and/or unreliable data could result in public harms, such as unnecessarily undermining confidence in Hawaiian Telcom's service quality.¹⁶ Finally, Hawaiian Telcom argues that granting its waiver is consistent with the Commission's rules which require that special circumstances warrant deviating from the general rule."

III. DISCUSSION

5. We find that Hawaiian Telcom has demonstrated that there is good cause to waive section 43.21(g) of the Commission's rules as it relates to Hawaiian Telcom's 2006 ARMIS Report 43-05. Although Hawaiian Telcom was required to file its 2006 ARMIS Report 43-05 by April 1, 2007, we find that strict enforcement of the filing deadline would unfairly penalize Hawaiian Telcom for difficulties that were beyond its control, and would not further the Commission's reporting goals.

6. We find that Hawaiian Telcom could not have reasonably anticipated or prevented the problems that arose in the transition of its customer service and business support systems from Verizon to BearingPoint. We further find that, based on these problems, Hawaiian Telcom cannot recreate the 2006 data necessary to complete the 2006 ARMIS Report 43-05.¹⁷ We note that Hawaiian Telcom has taken steps towards resolving the problems that resulted in its inability to fulfill its regulatory reporting obligations. Additionally, we find that it is in the public interest to not commingle incomplete or inaccurate data in the ARMIS database. Therefore, we find that special circumstances warrant a waiver of Hawaiian Telcom's reporting obligations for its 2006 ARMIS Report 43-05.

7. Hawaiian Telcom anticipates that the customer service and business support systems problems will have a continuing impact on its ability to complete its 2007 ARMIS 43-05 and 43-08 Reports, which will be due April 1, 2008.¹⁹ Specifically, Hawaiian Telcom states that it will need to focus its limited resources in the coming months on development and deployment of reliable systems and it anticipates it will not have adequate data for the 2007 ARMIS Reports.²⁰ We find that the record currently before us is not adequate to warrant waiving these reporting requirements at this time. While the public interest is served by not including incomplete data in the ARMIS database, the Petition does not contain sufficient facts or circumstances for us to conclude that Hawaiian Telcom will not be able to comply with its 2007 ARMIS filing requirements. Therefore, we take no action in this Order on the waiver of Hawaiian Telcom's 2007 ARMIS 43-05 and 43-08 Reports.²¹

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 43.21(g) of the Commission's rules, 47 C.F.R. § 43.21(g), due April 1, 2007, filed by Hawaiian Telcom, Inc. IS GRANTED.

¹⁶ See *id.*

¹⁷ See *Northeast Cellular Telecommunications, Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (citing *WALT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)).

¹⁸ See Petition at 6.

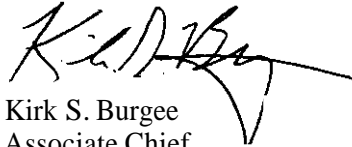
¹⁹ See Petition at 6.

²⁰ See Petition at 6.

²¹ Because we take no action on this aspect of the Petition, we expect that Hawaiian Telcom will either submit additional information to support its request for waiver of its 2007 ARMIS 43-05 and its 43-08 filing requirements, or withdraw the request.

9. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Kirk S. Burgee", with a stylized flourish extending from the end.

Kirk S. Burgee
Associate Chief
Wireline Competition Bureau